

HONG KONG / JUDGMENT

# HKSAR v. LUI WING BIU

## COURT

Court of First Instance

## DECIDED

2 February 2007

## CASE / FILE NUMBER

HCMA1029/2006

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj ij\_) pellant

Coram: Deputy High Court Judge Line in Court Dates of Hearing: 2 February 2007 Date of Judgment: 2 February 2007

## J U D G M E N T

1. This is an appeal against two convictions of indecent assault. The Complainant was working as a domestic helper in the Appellant s household. She was a young Filipina woman who had commenced working there in January of 2006.
2. The Prosecution case was that on 3 March 2006 the Appellant requested the Complainant to give him a bath, during the course of which he behaved inappropriately in front of her and that constituted the first allegation in time, in respect of which the learned Magistrate ruled there was no case to answer, he having found there was no unlawful touching.
3. The second allegation in time concerned the 3 April, at about 11 at night, when the Appellant entered the Complainant s room whilst she was sleeping. He pushed her over on the bed and lay down beside her. He touched her face and cheeks and made as if to touch her breasts. She covered them with her arms.
4. The 3rd Charge alleged that on 4 April, at about 10 in the morning, in other words the following day, the Appellant opened the door for the Complainant from the inside as she was coming in and touched her cheeks and kissed her on the lips. Her report was made to the police on 18 April 2006.
5. It is the case that the Complainant had said in a witness statement made at the time of her complaint, and said in her evidence, that on the morning of 4 April the son of the household, called Ronald, was there in the next-door flat asleep. Evidence was called that

suggested that Ronald in fact at that time was at Ocean Park. The Magistrate proceeded on that basis. He judged that the Complainant had made a mistake in this regard. The argument on appeal today has centred very much round that point that is there to be made for the defence. At the trial, the Magistrate amended the date from 4 April to a day unknown in April. Complaint is made about the fact of the amendment and the finding that the matter was explained by innocent mistake.

6. It goes without saying that in cases like this that a Magistrate who has the opportunity to see and hear the witnesses is far better placed to judge their credibility and reliability than I am here today on paper. This case ran for days in the Magistracy. I believe it to be right that the Complainant herself was in the witness-box for no less than two days. When one refers to seeing and hearing the witness, it is not just a question of demeanour, how they look and hold themselves, their body language, it engages a whole host of matters that the Magistrate is able to assess, which can be summarised by saying he understands the context in which question and answer occur as well as being able to see what sort of people he is dealing with.
8. I am not going to decide this appeal merely on the basis that he was in a better position than I, but obviously his findings in respect of the Complainant's credibility are of great importance in this appeal. He said this: I find PW1 to be an honest and reliable witness and I accept her evidence. She impressed me as an unsophisticated and obedient person. She has given lengthy evidence of various incidents taken place in the period of months. However, she was able to give a clear account of the time, people, place and the course of the incidents. I firmly believe one can only do this if it is his or her personal experience and not fabrication.
9. It is later in his statement of findings that he deals with the question of the presence of Ronald in the next-door flat, which was adjacent to the flat in question, on 4 April. He said this: Concerning the date of the incident of Charge 3, I believe PW1 might have made a genuine and honest mistake in the light of the evidence given by DW2 and DW3. If the incident was a fabrication there is simply no need to go to such detail about the Defendant's son sleeping in his room. Whether Ronald was sleeping in his room has nothing to do with whether the Defendant had kissed PW1. Though PW1 made a mistake as to the date of the incident, apart from that I believe she has told the truth. I do not believe PW1 would invent or make up these allegations against the Defendant.
10. It is thus the Magistrate had well in mind the whole point about the presence of Ronald and how it contradicted the testimony given by the Complainant.
11. Complaint is made about the fact that the charge was amended. If there was the divergence between the evidence and the date in the charge, then the Magistrate was obliged to consider amendment and to amend unless it was unjust to do so. There is nothing in the complaint that he raised the matter.

12. What the amendment apparently was designed to do was to allow the case to proceed with the scope for innocent mistake to be investigated. It seems to me there would be nothing wrong if that was the course undertaken. However, I am of the view there was probably no need to make the amendment because when one asked what was the mistake about, was it the date on which the kissing incident occurred or the recollection of Ronald being in the flat, the answer, so it seems to me, must come down firmly on the side of the latter.
13. The part of the Magistrate's statement of findings that I have already quoted refers to a mistake as to the date of the incident. Whatever his view was about which way the error of recollection, which he found to be an innocent error of recollection, went does not really matter. As I have already said, the evidence that was attacked by the innocent error would obviously have been the recollection of the presence of Ronald: she had got mixed up about which day he was still there in bed rather than remembering the kiss was the day after the incident on the bed, which happened on the night of 3 April, in respect of which date that charge remained unamended.
14. Putting aside the technicalities of amendment, the real point advanced by Mr Harris today, on appeal, is that the error of the Complainant in saying that Ronald was there on the morning of the 4th, when he was not, is such that I should not trust the Magistrate on his findings of credibility and I should find there is a reasonable doubt in the case about this Appellant's guilt.
15. The point was a good one for the defence and it received due consideration by the Magistrate but one cannot say he could not have come to his conclusion as a reasonable Magistrate that it was explicable by innocent error. I do not seek to disparage it by describing it so, but it was a jury point. There are plenty of cases that go to juries in this and other jurisdictions, which contain similar sort of points. Frankly, no one is surprised in many of those cases when jurors return verdicts of guilty.
16. Despite the able submissions made to me today, this is a case where I am left with no lurking or reasonable doubt from the material before me. I do not hide the fact, in coming to that conclusion, I do place great weight on the findings as to credibility of the Magistrate because it appears to me he addressed all the issues in a detailed and competent statement of findings, took on the issues that he was faced with and resolved them in a way commensurate with common sense and his observation of the witnesses.
17. I am bound to say one of the things that struck me about the case, but which the Magistrate did not rely upon, is this: that there was evidence of a recent complaint from PW3 in the case, a lady who worked at the employment agency that supplied the Complainant to the Appellant's household, and that complaint was on or about 3 March, matching up with the request that the Complainant assist the Appellant in his bath. I repeat the charge only failed as a substantive charge because of the lack of touching and the Appellant dealt with the matter in his evidence. He denied that any such request was made. This incident was a month before the matters under scrutiny today and it seems to me it had to be met by the

sort of argument, that she was laying the ground for false complaint later.

18. Of course, people like the Complainant could take that course of laying the ground but given the findings made by the Magistrate of her lack of sophistication and her obedience, and the like, and this being her first contract in Hong Kong, well, I put it like this: the matter does the Appellant s case significant damage.
19. Accordingly, the grounds set out in paragraphs 3 and 4 of the perfected grounds in the appeal against conviction, come to nothing. Ground two claimed that the Magistrate wrongly permitted evidence to be adduced in the trial which was neither relevant nor admissible. This was not a ground pursued with any vigour, which was realistic because the Magistrate in his statement of findings identified the relevant material and specifically disavowed any reliance upon it.
20. The fifth ground, in effect, complained that if proper weight had been given to the clear record that the Appellant possessed and his undoubted good character, then he would have been believed and there would have been a reasonable doubt in the case. Of course, the Magistrate took into account his character. In the end, the reason his evidence was not accepted was because once the Magistrate had heard all the evidence (including the defendants) he judged he heard truth in the evidence of PW1. Once, he was of that view, it had to result in the rejection of the Defendant s evidence because it simply and obviously, could not live with that of PW1. There is nothing, therefore, in ground five. Accordingly, the appeals against conviction are dismissed. The appeal against sentence was abandoned prior to this hearing. (P Line) Deputy High Court Judge Representation: Ms Ho May-yu, Lily, Senior Government Counsel, of the Department of Justice, for the Respondent Mr Graham Harris, instructed by Wong, Hui & Co., for the Appellant PAGE PAGE CRT33/2.2.2007/DB HCMA1029/2006/Reasons for Judgment A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V &`#\$ JUDGE.DOT setup Microsoft Word 9.0 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

|                 |                                                                                                                                                         |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| ORIGINAL SOURCE | <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=56129">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=56129</a>     |
| CASE PAGE       | <a href="https://chat.esheria.ai/case-law/hong-kong/hksar-v-lui-wing-biu-2007">https://chat.esheria.ai/case-law/hong-kong/hksar-v-lui-wing-biu-2007</a> |

Prepared on 29 October 2026 · Esheria